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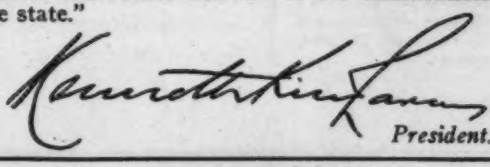
THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

Interference with Freedom of Parties to Contract

Chapter 271, Texas Laws of 1931, prescribes, *inter alia*, the terms and conditions under which the public highways of the state may be used for motor truck freight transportation by private contract carriers. In *Stephenson v. Binford et al.*, decided December 5, 1932 (53 S. Ct. 181), the United States Supreme Court, affirming the decree below, sustains the Act, one of the chief aims of which, so it says, is, plainly, the protection and conservation of the highways. The Railroad Commission is authorized to prescribe minimum rates not less than those prescribed for common carriers for substantially the same service. The Court says: "Undoubtedly, this interferes with the freedom of the parties to contract, but it is not such an interference as the Fourteenth Amendment forbids. * * * When the exercise of that freedom conflicts with the power and duty of the state to safeguard its property from injury and preserve it for those uses for which it was primarily designed, such freedom may be regulated and limited to the extent which reasonably may be necessary to carry the power and duty into effect. * * *; and it would be strange doctrine which, while recognizing the power of the state to regulate the use itself, would deny its power to regulate the contract so far as it contemplates the use. * * * Nor does it matter that the legislation has the result of modifying or abrogating contracts already in effect. Such contracts are to be regarded as having been made subject to the future exercise of the constitutional power of the state."



President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for February

Withdrawal by Foreign Corporation

A corporation "doing business" in a state other than that of its domicile, particularly when such business involves a construction contract or other undertaking of a similar nature, may find it expedient to withdraw from the foreign state when its immediate activities therein have ceased. In such a case the question may arise as to the rights and liabilities of such corporation with reference to business done and contracts entered into in the foreign state while the corporation was in good standing therein, and before its withdrawal therefrom. Generally, it may be said that as to such business and contracts the corporation remains within the jurisdiction of the state and can sue and be sued with reference thereto. This would seem to be an equitable rule, since it would certainly be unjust to deny the corporation the right to recover as to business done and contracts entered into while properly qualified, or to allow it, by the act of withdrawing, to defeat the rights of others arising from such business or under such contracts. It would seem to be essential that the corporation be considered as remaining within the jurisdiction for the purpose of the adjusting of all controversies arising by virtue of activities in the state before the withdrawal.

It has been held in California that, "where a foreign corporation has complied with the provisions of law enabling it to do business in this state, and has subsequently withdrawn from such intrastate business, and filed the certificate thereof in the proper manner, there is nothing in our law to prevent it from subsequently maintaining an action to collect an account that arose while it was lawfully doing business in this state, and the filing of such an action does not constitute doing business within the meaning of the statute." (*Indian Refining Co., Inc. v. Royal Oil Co., Inc. et al.*, 283 P. 856.)

In an Iowa case it is said that, "It is not the spirit of the law to permit a corporation having a process agent in a foreign jurisdiction to make contracts in that jurisdiction, and, by withdrawing therefrom, or by having its authority revoked, compel parties litigant to seek the courts of the corporate domicile for the enforcement of claims or rights arising antecedent to the revocation or withdrawal." (*McClamroch v. Southern Surety Co.*, 187 N. W. 41.)

In Kansas the statute (Sec. 17-804) provides that the jurisdiction "shall continue and remain in full force and effect as to any cause of action arising out of any act or transaction prior to the revocation of such license."

Although there may be variations in particular cases, it is felt that the above extracts sufficiently state the general rule applicable in such cases.

Domestic Corporations

California.

Legality of an assessment on stock. The articles of incorporation of a California corporation were amended to provide that *the corporation* shall have power to levy and collect assessments on its stock; at the time of amendment Section 331 of the California Civil Code provided that "If the articles expressly confer such authority, and subject to any limitations therein contained *the directors* (italics supplied) of any corporation may in their discretion, levy and allot assessments upon all shares of any or all classes made subject to assessment by the articles." In this action to annul an assessment, etc., levied by the directors of the corporation, on the ground that the assessment was illegally laid since the articles conferred the power to levy on the corporation but not on the directors, the California District Court of Appeal, Fourth District, affirms the judgment below sustaining the assessment. The court says: "Reasonably interpreted, section 331 as it then stood provides that where articles of incorporation authorize the levying of an assessment, the same may be done by and at the discretion of the directors. We think it is equally true that the amendment here in question in giving such authority to the corporation, thereby authorized the exercise thereof by the board of directors." *LaPlante v. Hopper, et al.*, 15 P. (2d) 523. Bradner W. Lee, Jr., and Kenyon F. Lee, both of Los Angeles, for appellant. Lawler & Degnon, of Los Angeles, for respondents.

Idaho.

Converting nonassessable stock into assessable stock by reorganizing. The directors of an Idaho corporation with nonassessable stock authorized, finding that the corporation was unable to procure further needed funds for operations and to take care of certain liabilities, by the "sale" of its stock, proposed to the stockholders that a new corporation be organized, with provision for assessable stock, stock of the new corporation to be exchanged for stock of the old, share for share, with exceptions not necessary of mention here. By vote of the stockholders the plan was adopted and put into effect so far as possible. Certain stockholders did not participate in the meeting at which the proposition was accepted but expressed their dissent to the plan both before and after the meeting. Stock of the new corporation was "issued" in their respective names and offered to them in exchange as per the terms of the "plan"; this stock was refused. An assessment on the new stock followed; appellants (the dissenting stockholders) refused to pay; their stock was then advertised for sale; this action followed—to set aside a transfer of corporate assets, to restrain the sale of corporate stock, for a receivership, and for an accounting. The Supreme Court of Idaho, reversing the judgment below, directs the lower court to enter a decree, embodying (in effect) the relief prayed for, except that the matter of receivership is to be held in abeyance, appellants to "be placed

in the status quo as it existed prior to the attempted transfer." It is held, variously: the transaction was a reorganization—not a sale of the old corporation's assets; dissenting stockholders are not thus to be deprived of their property or forced to change their contract rights without their consent, nor can they be compelled to participate in the continuation of the corporate business under a new corporate franchise; "the nonassenting stockholder cannot be forced into the new corporation at all, nor can he be deprived of his nonassessable stock against his will by any majority in any manner." *Whicker, et al. v. Delaware Mines Corporation, et al.*, 15 P. (2d) 610. Therrett Towles, of Wallace, for appellants. Frank Griffin, of Kellogg, and John M. Gleeson, of Spokane, Wash., for respondents.

Illinois.

On enjoining, by Federal court in Illinois, transfer of stock of Illinois corporations deposited with New York banks as collateral for loans to Illinois corporation now in hands of receivers appointed by said court. The United States Circuit Court of Appeals, Seventh Circuit, granting appellants' motion to vacate the injunctional orders of the U. S. District Court (N. D. of Illinois, E. D.), says: "The question that confronts us may be stated thus: May the United States District Court for the Northern District of Illinois which has, under proper application, appointed receivers of an involved or insolvent corporation, and whose receivers have taken possession of the property of such insolvent company, restrain the sale of stock of other Illinois corporations, which stock, prior to the appointment of the receivers, had been pledged or hypothecated with a New York bank to secure loans made by the said insolvent company of said New York bank?" The court concluded that "the situs of the pledged securities (so far as situs affects jurisdiction of the court in a receivership suit is concerned) is in New York. The absence of possession, or any right to possession, by the receivers, and the location of the pledged securities with the pledgees in New York, are decisive of the question"—, and so, the res was not within the Northern District of Illinois. "The situs of securities depends in part, we think, upon the situation in which the situs becomes material. To illustrate: Situs of securities for taxation purposes may be in one state; situs for the purpose of determining whether the securities are res within the jurisdiction of a court may be in another state." (Of moves made, in the direction here indicated, in courts within New York State or otherwise we say nothing.) *Guaranty Trust Co. of N. Y. v. Fentress, et al.*, and five other cases. 61 F. (2d) 329. H. K. Tenney and S. A. Guthrie, both of Chicago, for appellants.

Michigan.

Law purporting to repeal certain statutes governing partnership associations held invalid. Act 327, Michigan Public Acts 1931, (General Corporation Act), by the terms of Section 191 repeals a large

number of acts among which are several governing "partnership associations, provided to be organized by Secs. 9919, 9925, Comp. Laws 1929." Here, information in the nature of quo warranto by the Attorney General to forfeit the charter of a Michigan partnership association, for failure to appoint an agent, and pay to the Secretary of State the filing fee covering such appointment of agent, as prescribed by such Act No. 327. The Supreme Court of Michigan after saying: "Partnership associations are not declared to be corporations by the statute providing for their creation. They have been declared not to be corporations except for the purposes expressly enumerated in the constitution," states that "It is claimed that by Act No. 327, P. A. 1931, partnership associations are in fact corporations. The legislature is powerless by its fiat to make a partnership association a corporation." The Michigan Constitution provides that no law shall embrace more than one subject which shall be expressed in its title. The title to the Act here in question refers throughout to corporations; "there is nothing in this title which indicates it has anything to do with partnership associations"; even the reference to repeal is "to repeal certain acts and parts of acts relating to corporations." And so: "Partnership associations not being corporations, the provisions of Section 191 of Act 327, P. A. 1931, are not within the title of the act, and in so far as the act purports to repeal the statutes above quoted providing for the organization of partnership associations, it is unconstitutional. It follows the writ of quo warranto should be denied." *Paul W. Voorhies, Attorney General v. Hill-Davis Company, Ltd.*, a partnership association, decided December 6, 1932. Commerce Clearing House Court Decisions Reporting Service, Requisition No. 78057.

New York.

Proceedings to determine validity of election of directors. Section 25 of the New York General Corporation Law provides as follows: "Upon the application of any member aggrieved by an election, and upon notice to the persons declared elected thereat, the corporation and such other persons as the court may direct, the supreme court at a special term thereof shall forthwith hear the proofs and allegations of the parties, and confirm the election or order a new election, as justice may require." In this proceeding to review an election of directors relief was denied by the Special Term "on the ground that the ownership of stock could not be determined in this proceeding, but resort must be had to an action in equity." The New York Supreme Court, Appellate Division, Fourth Department, reverses, "as a matter of discretion" and remits for further hearing, saying that "the status of stockholders as such may be inquired into in this proceeding." It was in evidence that certain shares, voted at the election, had been issued for less than par, it not appearing, however, whether or not such stock was treasury stock. "Other claims as to voting rights deserve attention."

In re Prophet, et al., 260 N. Y. S. 239. Ernest C. Whitbeck, for appellants; Eugene J. Dwyer, for respondents: both of Rochester.

Law providing that "every pharmacy shall be owned by a licensed pharmacist" held unconstitutional. On January 11, 1933, the New York Court of Appeals unanimously affirmed, without opinion, the decision of the Supreme Court, Appellate Division, Fourth Department, in *Hyman Pratter vs. Lascoff et al.*, constituting the New York State Board of Pharmacy [The Corporation Journal, October, 1932, page 225], which decision in turn, on the authority of *Liggett Co. vs. Baldridge*, 278 U. S. 105 [The Corporation Journal, January, 1929, page 322], affirmed that of the Supreme Court, Erie County, 249 N. Y. Sup. 211 [The Corporation Journal, March, 1931, page 346], granting plaintiff's motion for judgment "declaring that so much of sections 1352 and 1354 of the Education Law which forbids the issuance of a certificate of ownership by anyone not a licensed pharmacist, to be unconstitutional, as in contravention of the 14th Amendment of the Federal Constitution." Mr. Philip Halpern, of Buffalo, appeared throughout as counsel for the plaintiff. Petition to the United States Supreme Court for writ of certiorari is to be filed.

North Carolina.

Corporate seal not essential to validity of a chattel mortgage. In answer to the single question presented for decision here, namely—Is a chattel mortgage duly authorized by a corporation and signed in its name by its president and attested by its secretary void for failure to attach the corporate seal?—the Supreme Court of North Carolina (on a claim for preference in a receivership proceeding) says, finding error below, "We think not." As authority reference is made to *Duke v. Markham*, 10 S. E. 1017. And continuing: "The party claiming under such corporate mortgage, however, would have the burden of showing its authenticity, for, in the absence of the company's seal, there is no presumption of corporate action." The court adds: "Perhaps it should be observed that we are not dealing with a conveyance or real estate mortgage of a corporation"; (*Bailey v. Hassell*, 115 S. E. 166; *Caldwell v. Mfg. Co.*, 28 S. E. 475). *Armstrong v. Home Service Stores, Inc.*, 166 S. E. 321. Charles L. Abernethy, Jr. of Newbern, for appellant Duffy. G. A. Barden, of Newbern, for the receiver.

Foreign Corporations

Iowa.

Making contract in Iowa, without more, is not "doing business" in Iowa by foreign corporation. Plaintiff-appellee, here, is a Maryland corporation, having no permit to do business in Iowa. It is engaged in publishing a "Trade Developer," carrying trade advertising cards and announcements. It solicited, by mail addressed to Iowa, an announcement insertion from an Iowa concern enclosing

an offer the acceptance of which, by its terms, "constitutes a complete irrevocable contract." The offer was accepted and deposited in the mail, in Iowa, for transmittal to the publishing company at its principal place of business in Washington, D. C. Section 8427, Iowa Code 1927, provides: "No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state unless prior to the making of such contract it shall have procured such permit"—i. e., the "doing business" permit prescribed by the Iowa foreign corporation law. Action, here, by the publisher on the contract; defense, the code section above quoted. The Iowa Supreme Court affirming the judgment below for plaintiff says that it is beyond question that the instant contract is an Iowa contract but more than that fact is necessary to bring the foreign corporation within the prescription of the statute. The corporation must have been doing business in Iowa. It is held that the publication, without the state, of the announcement, was not "doing business" in Iowa, and "that the entering into the contract by the appellee-corporation with the appellant in the state of Iowa does not constitute 'doing business in this state' within the purview of the statutory law." *Intern'l Trans. Asso. v. Des Moines Morris Plan Co.*, 245 N. W. 244. Parsons & Mills, for appellant; E. A. Lingenfelter for appellee: all of Des Moines.

Louisiana.

Action by nonresident of Louisiana against withdrawn foreign corporation. Suit in a Louisiana state court by a non-resident of Louisiana against a foreign corporation formerly licensed to do business in Louisiana but then withdrawn, on account of injuries received in the state as employee at time the corporation was doing business in state and was licensed thereunto. Summons was served on agent appointed for service of summons whose appointment had been rescinded at time of corporation's withdrawal. Defendant excepted to the citation and pleaded to the jurisdiction of the court; both were overruled; the Court of Appeals of Louisiana, Second Circuit, sustains the lower court and affirms the judgment for plaintiff (we do not go to the merits). Louisiana Act No. 184, Laws of 1924, provides that the authority of the appointed agent "shall continue in force and be maintained as long as any liability remains outstanding against said corporation growing out of or connected with the business done by said corporation in this State." Considering the question as res novo in Louisiana the court says: "By the clear language of Act No. 184 of 1924, Louisiana joined the ranks of the majority of the states of the Union in the rule that the authority of the agent shall continue in force and be maintained (as stated above), and thereby abrogated the rule in the state prior to the passage of this Act." It was conceded that the act gave to a citizen of Louisiana the right to sue but it was urged that the right is not given to nonresidents. The court holds it to be immaterial whether the plaintiff be a resident or a nonresident. By entering Louisiana

for the purpose of doing business therein, the foreign corporation submitted itself to the authority of its courts "and is bound by the statutory provisions respecting the method of such courts obtaining jurisdiction over it." *King v. American Tank & Equipment Corporation*, 144 So. 293. Thatcher, Browne, Porteous & Myers, of Shreveport, for appellant. Robert Roberts, Jr., of Shreveport, for appellee.

New Jersey.

Action by receiver of a foreign corporation, appointed by New Jersey court, against directors for damages on account of their alleged negligence. Action in the Supreme Court of New Jersey by the receiver of a Delaware corporation, appointed by the New Jersey Court of Chancery, against the corporation's directors to recover damages for their alleged negligence in the conduct of the corporate affairs. On defendants' motion to strike out the amended complaint (motion granted on other grounds) it was urged that the court had no jurisdiction of the action (under the circumstances as stated). To this the court answers that the questions thus raised have been put at rest in New Jersey adversely to the contention of the defendants by the case of *Atwater v. Baskerville*, 104 A. 310, 314, affirmed 106 A. 369, and holds: "Since the present action is to enforce alleged negligence of directors over whom jurisdiction can be and has been obtained in this state which the corporation or its creditors might have enforced, it is apparent that this court has jurisdiction of the matter, and the complaint cannot be stricken upon that ground." *Bentley v. Colgate, et al.*, 163 A. 98. Herbert C. Gilson, of Jersey City, for plaintiff. Merritt Lane, of Newark, for defendants.

New York.

On "doing business" by a foreign corporation because of its having a subsidiary within the state as its agent. On a motion to set aside service of summons; disposition of motion held in abeyance pending result of reference to take proof and report to the court on the exact relationship existing between the moving defendant and its subsidiary. Leading to this, the New York Supreme Court, Special Term, New York County, said: "The conduct of its business through a subsidiary does not 'necessarily' subject the moving defendant to the jurisdiction of the courts of this state (*Cannon Manufacturing Co. v. Cudahy Packing Co.*, 267 U. S. 333), even if the subsidiary is an independent agency (*Bank of America v. Whitney Central National Bank*, 261 U. S. 171; *Cannon Mfg. Co. v. Cudahy Packing Co.*, supra). A different conclusion would seem to be necessary, however, if the subsidiary was not acting as an independent agent but rather as one subject to the control and direction of the parent. In the latter event the parent would be doing business here and therefore present for the purposes of the suit, just as it would be if it were conducting its business activities here through an individual employee or agent (*Industrial Research Corp. v. General Motors*

Making your company's corporate representation a sideline for a business employe is like depending for fire protection on a volunteer fire department.

The officers of many a corporation qualified as foreign in one or more states flatter themselves that they "have always got along," as they put it, with having their own employes in those states act as the corporation's statutory agents. But the "getting along" in too many cases has been at the cost of legal difficulties and sometimes financial loss.

Companies have been handicapped in making proper defence against claims, or even have suffered judgments entered by default, through an employe-agent's faulty or delayed action on processes served upon him; or been penalized for failure to file a required report or pay a tax, or been debarred from protecting themselves because corporate status unknowingly had been forfeited, through such an agent's failure to apprehend the purport of notices served upon him.

And even with those which have had no trouble at all, a close investigation often discloses that the only reason for their getting along has been that a delinquency accidently went undiscovered by those who would have pressed the penalty for it, or sheer luck kept the corporation's safety untested.

No — statutory representation for a corporation is a technical business of its own. Its duties require an experienced and trained man, and one with no conflicting interests. There can be no doubt about it. But, what makes this a matter unlike any other employment a business house

Corp., et al., (D. C.) 29 F. (2d) 623)." *American Tri-Ergon Corporation, et al. v. Ton-Bild Syndikat, A. G., et al.*, 260 N. Y. Sup. 139 (order affirmed 258 N. Y. Sup. 1061.) Banzhaf & Richter, of New York City (Fred Francis Weiss, of New York City, of counsel), for the motion. Hirsh, Newman, Reass & Becker, of New York City (David L. Podell, Emanuel Newman, Daniel G. Rosenblatt, and Arthur Abrams, all of New York City, of counsel), opposed.

Oklahoma.

On "doing business"; substituted service of process on secretary of state when agent of corporation is bringing an action against it. This is an action for commissions alleged to be due him brought by a salesman, found to be a resident of Oklahoma, against a corporation, foreign to Oklahoma, which had appointed no agent in the state for service of process on it. Substituted service was made on the secretary of state. Judgment by default; thereafter on special appearance the corporation moved to vacate on the ground that as it was not doing business in Oklahoma the service on the secretary of state was unauthorized; motion overruled and order refusing to vacate the judgment entered; on appeal, the Supreme Court of Oklahoma affirms—rehearing denied. The corporation is engaged in the manufacture of machinery in Missouri; the Oklahoma salesman's duty was to submit orders taken by him to the home office in Missouri for acceptance or rejection; numerous orders taken by him when the secretary of the company was in Oklahoma were there approved and accepted by the secretary; all shipments were made from without Oklahoma. The salesman on occasion, under authorization, took old machinery in part payment which he stored in Tulsa in rented space and thereafter sold and had delivered to Oklahoma customers. The company had no other agent than the salesman in the state and had no office or place of business there. Under these conditions the corporation was held to be "doing business" in Oklahoma, and, so, that the substituted service was authorized. It was also urged that the provision for substituted service was inapplicable in the case of an agent or employee plaintiff. It is held that if the agent or employee is a resident, the provisions of the statute apply, as no exception is made in favor of foreign corporations as against agents or employees thereof. *R. W. Yates Laundry Machinery Co. v. Hoppe*, 15 P. (2d) 584. Frank Ertell and H. Tom Kight, both of Claremore, for appellant. G. W. Reed, Jr. of Tulsa, for appellee.

South Carolina.

Venue in action against a foreign corporation and an individual, the individual dying after action is brought. Suit in tort brought in a Charleston County (S. C.) court against a foreign corporation and an individual, a resident of Charleston county. As the Supreme Court of South Carolina says: "It seems difficult for this case to find a landing field." Suffice it to say that at a certain stage of the proceeding the individual defendant died; the cause of action

against him did not survive. Alleging that it had no agent or property in Charleston county but that it did have property and an agent in Dorchester county, the foreign corporation, the then only defendant, sought to have the cause transferred to Dorchester county. This is "practically the sole issue." The South Carolina Code (in the case of a civil action such as is this) provides that if there be more than one defendant, then the action may be tried in any county in which one or more of the defendants to such action resides at the time of the commencement of the action." Deciding "the case on the jurisdictional ground, owing to the importance of the question involved," the court holds that jurisdiction is fixed as of the commencement of the action. "Again we may well suppose a suit for a joint tort against a foreign corporation, which had no officer, agent, or business in this state, and against a resident defendant. The resident defendant dies. If the *place* of trial is to be determined by the residence of the sole defendant at the *time* of trial, as contended by the appellant, we fear the cause would never be tried." Judgment below, refusing to transfer, affirmed. *Halsey v. Minnesota-South Carolina Land & Timber Co.*, 166 S. E. 626. Legare Walker, of Summerville, and Lide & McCandlish, of Marion, for appellant. Mitchell & Horlbeck, H. L. Erckmann, and J. C. Long, all of Charleston, for respondent.

Washington.

Service of process on behalf of foreign corporation on Secretary of State who does not notify corporation there being no statutory mandate for such notice, held valid. Thus the caption, in The Corporation Journal for January, 1933, of a digest of the decision of the Supreme Court of Washington in the case of *Bond & Goodwin & Tucker, Inc. v. Superior Court of Spokane County, et al.* (15 P. (2d) 660). On petition for rehearing presented because of doubt as to whether or not the decision was a "final" decision, this doubt is removed by the court (December 2, 1932)—it is a "final" decision. This signifies, presumably, that the United States Supreme Court will have early occasion to resolve the constitutional questions presented by this case.

Wisconsin.

Service of process on behalf of foreign corporation on officer of corporation in state on corporation's business. Wisconsin treats as present within its boundaries a foreign corporation when it is doing business there. Service of process on such corporation may be made, as circumstances warrant, on the secretary of state or on an agent designated for the purpose, or, on the corporation's agent in charge, or on an officer who is within the state for the purpose of transacting business for the corporation and who is vested with authority to transact such business within the state, but then only if the corporation has property within the state, or the cause of action

arose within the state, or the cause of action exists in favor of a resident of the state. Here service was made on an officer of a Delaware corporation, not licensed to do business in Wisconsin, when he was in Wisconsin for the specific purpose of attempting to compose, with a resident of the state, a controversy arising by virtue of a default in payment on the corporation's bonds. In connection with proceedings by the corporation for a writ of prohibition the Wisconsin Supreme Court holds the service good. "The petitioner deliberately entered the state for the purpose of negotiating with reference to the very matter out of which the suit arises." "The validity of the service on a foreign corporation by serving process on an agent or secretary of state may depend on a showing of continuous course of business, while service upon its president or other officer designated by statute through and by whom the corporation has entered the state for a special and for its own peculiar purpose, even though it amounts to a single transaction, may be perfectly good. * * * we are (then) concerned only with the question as to whether the corporation has so acted as to manifest its presence in the person of its officers to the extent that we may say it was here at the time and subject to service of process." *State ex rel. Consolidated Textile Corporation v. Gregory, Judge,* 245 N. W. 194. Bottum, Hudnall, Lecher, McNamara & Michael and Suel O. Arnold, all of Milwaukee, for plaintiff. Gold & McCann, of Milwaukee (Morris Karon, of Milwaukee, of counsel), for defendant.

Taxation

Georgia.

Act imposing special sales tax on sales in Georgia of convict-made merchandise, held valid. An interlocutory injunction restraining the tax collector from collecting the special tax of 15% of the retail price of convict-made merchandise, imposed by a 1931 amendment to the Georgia General Tax Act, on certain convict-made goods shipped into Georgia from Tennessee, and sold by the petitioner in Georgia, was granted by a Superior Court. On error to the Supreme Court of Georgia the judgment is reversed, the taxing provision in question being held valid to the extent of the contentions raised against it. It was urged, *inter alia,* that the act violates the Commerce Clause of the Federal Constitution, for that and particularly because there are no Georgia convict-made goods offered for sale in Georgia and so the burden will rest entirely on goods made by convict labor without the state and imported and sold therein. Special emphasis was laid by the petitioner on the decision of the Supreme Court of Ohio, in *Arnold v. Yanders,* 47 N. E. 50, holding an act of the Ohio legislature unconstitutional because violative of the Commerce Clause. But, says the Georgia court, the Ohio act sought to impose a tax on prison-made goods of other states, imported into Ohio, at the same time relieving from such burden any products of Ohio convicts;—here there is no such discrimination,

and no attempt to regulate commerce among the states. The court does not think the fact that no Georgia convict-made goods are offered for sale "makes any difference; because the act stands written so that it would affect any convict-made goods that might be offered for sale, if any manufactured in this state should be placed upon the market." *Richardson, Tax Collector, v. Johnson Furniture Co.,* 166 S. E. 662. Carter, Carter & Johnson, of Atlanta, for plaintiff in error. Hendrix & Buchanan, of Atlanta, for defendant in error.

Illinois.

Minimum franchise tax provisions held unconstitutional. Under the caption as shown above, which states the decision in the case, a digest appeared in The Corporation Journal for December, 1932, of *St. Louis Southwestern Railway Co. v. Stratton, Sec'y. of State of Illinois,* at the end of which we stated our understanding "that a petition asking for a rehearing is to be filed." An announcement from the bench on December 31, is that rehearing has been granted.

Michigan.

Domestic corporation franchise tax; foreign commerce; charter purpose clauses. "Appellant is a Michigan corporation engaged in operating the international bridge spanning the river between Detroit and Sandwich, Ontario." The franchise tax on a Michigan domestic corporation is imposed "for the privilege of exercising its franchise and of transacting its business within this state." It has been held that this is a tax on the privilege or power "to do" rather than on the privilege "to be" (*Michigan v. Michigan Trust Co.,* 286 U. S. 334—The Corporation Journal for October, 1932, page 235). It was contended by appellant that in owning, maintaining, and operating its bridge it was engaged exclusively in foreign commerce, and that the taxing act, construed to impose a fee for the privilege of doing that business, violates the commerce clause of the Federal Constitution. The United States Supreme Court affirms the judgment below sustaining the correctness of the tax imposition in the instant case. One of the purpose clauses of appellant's charter reads: "This corporation may maintain offices or agencies, conduct its business or any part thereof, purchase, lease or otherwise acquire, hold, mortgage, convey and assign real or personal property, and do all or any of the acts herein set forth, outside of the State of Michigan as well as within said State." The court says: "We do not consider whether appellant is engaged in foreign commerce for we are of opinion that it has failed to establish that it has no power to carry on any business that is not within the protection of the commerce clause." *Detroit International Bridge Co. v. Corporation Tax Appeal Board,* 53 S. Ct. 137. Victor W. Klein, of Detroit, Alfred A. Cook, of New York, N. Y., and Thomas G. Long, of Detroit, for appellant. Alice E. Alexander and Paul W. Voorhies, both of Lansing, for appellee.

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

National Cash Register Company
Lake Superior Investment Co.
Warner Bros. Pictures, Inc.
Royal American Corporation
American Enka Corporation
Guantanamo Sugar Company
Rockland Securities Corporation
Rosenbaum Grain Corporation
McKesson & Robbins, Incorporated
United Milk Products Corporation
Knickerbocker Ice Company
Bear Lithia Springs Company
The Club Aluminum Company
Bergen Stores Corporation
Castles Ice Cream Corporation
Twin City Rapid Transit Company
Paramount Distributing Co., Inc.
American Department Stores Corp.
The General Corporation (formerly Commonwealth & Southern Corp.)
Southern Lumber Company of New Jersey
Transcontinental Air Transport, Inc.

Some Important Matters for February and March

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Franchise Tax payable April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Foreign Corporations.

ARIZONA—Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Franchise (Income) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

COLORADO—Annual Report due on or before March 15.— Domestic and Foreign Corporations.

CONNECTICUT—Annual Report on or before February 15 (if corporation was organized or qualified between January 1 and June 30). —Domestic and Foreign Corporations.

Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations making payments of dividends, interest or other income to any citizen or resident of Delaware aggregating $1,000 or more during 1932.

DOMINION OF CANADA—Return of Employers and Return of Dividends for income tax purposes due on or before March 31.—Domestic and Foreign Corporations.

GEORGIA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corps.

IDAHO—Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between February 1 and March 1.—Domestic and Foreign Corporations.

INDIANA—Annual Capital Stock Report due on or before March 1.—Foreign Corporations engaged in manufacturing.

KANSAS—Annual Report and Franchise Tax due on or before March 31.—Domestic and Foreign Corporations.

LOUISIANA—Capital Stock Statement and Tax due on or before March 1.—Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MARYLAND—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Return of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Excise Tax Return due between April 1 and April 10.—Domestic and Foreign Corporations.

MISSISSIPPI—Income Tax Return and Return of Information at the source due on or before March 15.—Dom. and For. Corps.

MISSOURI—Return of Information at source due on or before March 1. —Domestic and Foreign Corporations

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

Annual Return of Net Income due on or before March 15.—Domestic and Foreign Corporations.

MONTANA—Annual Report of Capital employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Return of Net Income due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corporations.

NEW JERSEY—Annual Franchise Tax Return due on or before the first Tuesday in February.—Domestic Corporations.

NEW YORK—Annual Franchise Tax Report of Real Estate and Holding Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate and Holding Corporations. Forms 41 C. T. and 42 C. T., Art. 9 of the Tax Law.

Annual Franchise Tax of Real Estate and Holding Corporations due on or before April 1.—Domestic and Foreign Real Estate and Holding Corporations.

NORTH CAROLINA—Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Annual Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

OKLAHOMA—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OREGON—Return of Information at the source due on or before January 15 (from corporations filing less than 10 returns) and on or before February 15 (from corporations filing 10 or more returns).—Domestic and Foreign Corporations.

Combined Excise (Income) Tax Return and Intangibles Income Tax Return due on or before March 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Report and Corporate Loans Report due on or before March 15.—Domestic and Foreign Corps.

Bonus Report due on or before March 15.—Foreign Corporations.

RHODE ISLAND—Annual Report due during February.—Domestic and Foreign Corporations.

Corporation Tax Return due on or before March 1.— Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual License Tax Report due during month of February.—Domestic and Foreign Corporations.

Annual Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due before March 1.—Foreign Corporations.

TENNESSEE—Annual Return of Supplemental Information due between January 10 and March 15.—Domestic and Foreign Corporations other than mercantile corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

UNITED STATES—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Return of Net Income due on or before March 15.—Domestic and Foreign Corporations having an office or place of business in the United States.

UTAH—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

VERMONT—Return of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

List of Stockholders due on or before April 5.—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WISCONSIN—Annual Income Tax Return and Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1931.

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act. Attorneys with a client who may, because of tariff barriers, be considering the organization of a Canadian company to conduct the company's Canadian or export business, will find this pamphlet extremely useful.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930.) A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.